No. 99-132

(6)

Supreme Court, U.S.
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In The
Supreme Court of the United States

TRACY E. MULLIGAN, ESQ.,
Petitioner,

v.

ASSOCIATES LEASING, INCORPORATED;
MILLER & MILLER AUCTIONEERS, INCORPORATED;
URBAN N. ZINK CONTRACTORS, INCORPORATED;
MARK J. FRIEDMAN;
CHARLES J. MILLER, INCORPORATED,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Reply Brief to Appellee's Brief in Opposition of Respondent Associates Leasing, Inc.

Tracy Ellsworth Mulligan, Jr.
Counsel of Record, Pro Se
ATTORNEY AT LAW
416 Hungerford Drive
Suite 215
Rockville, Maryland 20850
(301) 340-9670

Pro Se

THE LEX GROUP • 1205 East Main Street • Suite 2 East • Richmond, VA 23219
(804) 644-4419 • (800) 856-4419 • Fax: (804) 644-3256

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QUESTIONS PRESENTED FOR REVIEW

The Petitioner incorporates by reference the "Questions Presented for Review" in his Petition for a Writ of Certiorari and amends the "Questions Presented for Review" in the brief of Respondent Associates Leasing, Inc. as follows:

I. Should this Court grant certiorari to decide whether the United States Bankruptcy Court for the District of Maryland had subject matter jurisdiction over a state-court complaint challenging a bankruptcy court-authorized sale of property of the estate, when the bankruptcy court merely "applied well-settled principles of law to a simple set of facts", as posited by Respondent -- or

Did the United States Bankruptcy Court nullify well-settled principles of law and misinterpret the Federal Statute 11 U.S.C. sec. 363?

II. Was the United States Court of Appeals for the Fourth Circuit correct when it affirmed the decision of the United States District Court for the District of Maryland, which affirmed the Bankruptcy Court's imposition of sanctions against Petitioner and Joanne A. Allnutt for filing frivolous and meritless pleadings in the Bankruptcy Court, as posited by the Respondent Associates Leasing, Inc. -- or

a. Whether the Bankruptcy Court, the United States District Court or the United States Court of Appeals lacked subject matter jurisdiction over property after it had been sold out of the Bankruptcy estate, to provide the basis for award of sanctions, (or to take any other action in the case, other than to remand to the State Court).

b. Whether the aforesaid courts erred in holding the pleadings filed to be frivolous and meritless.

III. As stated, in Respondent's Brief.

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This Reply Brief addresses only matters raised in Respondent's Brief.

STATEMENT OF THE CASE

A. The Course of Proceedings

No comment.

B. Statement of Facts

[Respondent's Brief (Resp. Br. p 4-6)]. The Statement of Facts in the Appellee's Brief fails to show that Mrs. Allnutt was a party in any litigation with her husband as a "Tax Protester", or that she was involved with his attempted "evasion" of certain federal taxes.

There is nothing to show that Mrs. Allnutt joined in any attempted conveyance of the Property to any of the other participants whose activities are set forth in the "Statement of Facts."

(Resp. Br. p. 6). The "Statement of Facts" completely misstates the decision of Judge Smalkin by claiming that "the Judge found that the assets in question were indeed Fred Allnutt's assets, that the assets belonged to no one else, and therefore were assets of the Fred Allnutt bankruptcy estate. Judge Smalkin's Order is at App. 86-88; Memorandum Opinion, app 89-93. The Order and Memorandum speak for themselves.

The issue of whether the subject assets were held in sole ownership of Fred Allnutt, or as tenant by the entirety with a spouse, was not decided or addressed.

Judge Smalkin's Order was specifically limited in its scope to a decision to disposing of all interests "of any party hereto" (App. 87, ¶ 6). Joanne Allnutt was not a party.

Judge Smalkin's Order decreed "that the assets in questions (those levied on by the IRS) are the assets of the

bankruptcy estate of Fred W. Allnutt, Sr. in Civil No S 92-2778." (App. 87, ¶ 2)

Under 11 U.S.C. the assets included in the bankruptcy estate include property held either individually or in shared ownership to the extent of the debtor's interest only. 11 U.S.C. sec. 541 (a)(1)

(Resp. Br. p. 5) The statement that "Mrs. Allnutt attended hearings concerning numerous competing claims to ownership of the property including claims lodged by her children" is not supported by App. 27.

(Resp. Br. p. 7) The sale order was not final for appeal purposes until confirmed by the court on March 30, 1995. (App. 18) *Gekas v. Pipin (In the Matter of Met-L-Wood Corporation, Debtor)* 861 F.3d 1012, at 1016 (7th Cir. 1988)

The repeated references "as fact" that Counsel presented a "frivolous and meritless" claim on behalf of Mrs. Allnutt is not a "fact", but is the point at issue here.

SUMMARY OF ARGUMENT

The award of sanctions by the Bankruptcy Court (affirmed on appeals) is based upon a decision that has nullified previously established principles of law, introduced conflicts within the Circuits and has misinterpreted 11 U.S.C. sec. 363, specifically in the areas of subject matter jurisdiction after sale of property from a bankruptcy estate; the interpretation of a Core Proceeding; the basis for remand the responsibility of the trustee with regard to shared ownership of property; the power of trustee to sell jointly owned property; and the role of the Bankruptcy Court in protecting purchasers from the estate.

Petitioner's interest for jurisdiction. The petitioner has both a financial interest in the sanctions and interest in protecting his reputation and the opportunity for future employment in seeking reversal of the sanctions and the

judicially protected defamation accomplished by Judge Schneider. The financial interest is in unpaid awards to Miller & Miller ($4,962.63) and Charles J. Miller, Inc. ($2,527.52) plus interest (App. 59). Further, Counsel faces a claim for malpractice from the client for the more than $100,000.00 paid by the client for the awards to the Associates Leasing, Inc. and Mark J. Friedman Chapter 11 trustee. As to reputation, plaintiff was admitted to the bar of the District Court of the United States for the District of Columbia on November 8, 1940. He served as an officer in the United States Army for 28 years, retiring in 1970, having received, among other decorations, the Legion of Merit. In 1971, Counsel took and passed the Maryland bar examination and has been a sole practitioner since then with offices in Rockville, MD. The vicious defamation contained in the Memorandum Opinion of Judge Schneider (App. 53-60) was predicated (App. 26-27) on Counsel's refusing to accept the Court's personal assurance that his own court approved sale by the trustee was valid, when it appeared to Counsel, from an investigation of the facts and the law, that Mrs. Allnutt had a viable claim for ownership of the property (separate and apart from the business "JFC"), and that her interest in the property had been sold out of the bankruptcy estate in violation of 11 U.S.C. sec. 363 (h)(i)(j). Counsel denies any effort of harassment or misuse of the court process.

Resp. Br. 9. Respondent's "Summary of Argument" presents Mrs. Allnutt's claim as the latest in a long history of hostility toward the judicial system and innocent third parties by Fred W. Allnutt, Sr.; that his saga has wound its way in the court system for over 6 years. Apart from his "career as a tax protestor," many of the actions filed by Fred Allnutt since the bankruptcy was filed pertained to his efforts to obtain an accurate and complete accounting for the assets of the estate. The negligence and omissions in the accountings filed in the bankruptcy case have been set forth in a letter

dated 23 August, 1999 from Fred W. Allnutt, Sr. to Kevyn D. Orr, Deputy Director, Executive Office for United States Trustees, Department of Justice, 901 E Street, NW, Suite 700, Washington, DC 20530, showing a failure to account for more than $1,000,000 in the estate. (Exhibit 1 attached) A second letter to Kevyn D. Orr detailed irregularities in the administration of the race car assets. (Exhibit 2 attached) When a shortage of $600,000 in the account submitted by the trustee was brought to the bankruptcy court's attention, the court refused to require a reconciliation and approved the Chapter 11 trustee's filing. An extract of the court's hearing is attached (Exhibit 3).

REASONS FOR GRANTING THE WRIT

The decision in this case cuts across a large section of bankruptcy law and puts in issue, in conflict with other circuits, the role of the bankruptcy judge, the trustee, the purchasers from a bankruptcy estate, the rights of the debtor and co-owners, and the power of the trustee to sell jointly owned property without complying with the 11 U.S.C. sec. 363 (h)(i)(j), as hereinafter set forth.

The instant case denies the spouse of a debtor the opportunity to fairly and fully litigate her claim to tenancy by the entirety or other ownership of the property sold out of the bankruptcy estate; attributes to her "as an insider" equal responsibility for her husband's prior actions and litigation; and punished the Counsel and client for seeking a legal determination of her property rights by imposing *in terrorem* sanctions.

ARGUMENT

1. THIS CASE HAS INTRODUCED SERIOUS CONFLICTS AMONG THE CIRCUITS.

A. SUBJECT MATTER JURISDICTION

(1) OTHER CIRCUITS: The Bankruptcy Court loses subject matter jurisdiction over property when it is sold out of the bankruptcy estate. *Matter of Chicago, Rock Island and Pacific Railroad 794 F.2d 1182, 1188 (7th Cir. 1986)*

> That some land was once owned by a bankrupt does not supply federal jurisdiction of disputes concerning that land. New disputes--arising after the closure of the bankruptcy, *or after the land has been sold by the Trustee to a Third party*--must be resolved through the processes available for such independent disputes. When a bankrupt railroad (or any other bankrupt) sells property with the approval of the court, the buyer acquires title clear of all claims in the bankruptcy. The property may not be hauled back into the Estate, and the terms of the sales are inviolate in the absence of fraud or collusion. *In re Suchy*, 786 F.2d 900 (9th Cir. 1985); *In re Rock Industries Machinery Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978). The court's jurisdiction lapses with its control of the property. See also *Matter of Lemco Gypsum, Inc.*, 910 F.2d 784 (11th Cir. 1990).

(2) THIS CASE. In contrast, the bankruptcy court here said, "The plaintiff's counsel argued that this Court no longer has subject matter jurisdiction over this controversy because the *res* in which the plaintiff is asserting an interest is no longer property of the bankruptcy estate. This Court disagrees. The cases that stand for the proposition that a bankruptcy court has no subject matter jurisdiction to decide questions of title to property after a

bankruptcy sale do not apply to the instant case which concerns lawsuits brought by debtors and their agents against purchasers of estate property during the pendency of the case. (App. 33)

B. DEBTOR'S PROPERTY IN THE BANKRUPTCY ESTATE

(1) OTHER CIRCUITS: The bankruptcy estate's rights in a debtor's property are limited to those rights had by the debtor. *Matter of Jones*, 768 F.2d 923 (7th Cir. 1985).

It is fundamental that the bankruptcy estate must have an interest in property as of the commencement of the case in order for the bankruptcy trustee to dispose of that interest. The Bankruptcy Trustee may only dispose of the debtor's interest in property which the debtor had as of the commencement of the estate. *In re Continental Airlines, Inc.* 780 F.2d at 1226 (5th Cir. 1986). See also *Sumy v. Schlossberg*, 777 F.2d 921 (4th Cir. 1985).

(2) THIS CASE. In contrast, the bankruptcy court first held that:

> The burden was upon the debtor and those claiming derivative rights to property of the estate through him to assert claims to that property against the right of the trustee to administer those assets during the pendency of the bankruptcy estate. Section 363(h) requires that a trustee who wishes to sell a co-owner's interest in property of the estate file an adversary proceeding against the co-owner prior to the sale of the co-owner's interest. 11 U.S.C. sec. 363(h). (App. 43, 44)

The bankruptcy court then held that:

> However, in the absence of knowledge of the existence by the trustee of a co-owner's claim, the trustee need not initiate a declaratory judgment action in the bankruptcy court to determine the nature of the debtor's ownership interest in property of the estate. Any rights the plaintiff may have had to claim an interest in property of the bankruptcy estate as the debtor's spouse were cut off when the property was sold by the Chapter 11 trustee after the debtor failed to exempt the property as that held by tenants by the entireties, and/or when the plaintiff, with full knowledge of the sale, failed to object to it. *Veltman v. Whetzal*, 93 F.3d 517,522 (8th Cir. 1996).

Veltman v. Whetzal is inapposite, because both husband and wife were parties in the bankruptcy, and agreements had already been entered into. The plaintiff in this case was never a party or witness, and received no notices from the court.

Obviously the trustee can sell co-owner's property if he did not know of co-ownership. In other circuits the remedy is a suit by co-owner in State Court. Under this case, the co-owner whose property is sold, has no remedy.

C. THE ROLE OF THE BANKRUPTCY COURT

(1) OTHER CIRCUITS. Once property has been sold out of the bankruptcy estate the bankruptcy judge has lost subject matter jurisdiction and has no further interest in the property. Judicial sales are on a *caveat emptor* basis. *Handlan v. Bennett* (51 F.2d 21, 4th Cir, 1931); *In re Brown*, 67 B.R. 635 (E.D.Ark, W.D., 1986).

(2) THIS CASE. In contrast, the bankruptcy court assumed subject matter jurisdiction over property that had been sold out of the bankruptcy estate and claimed an obligation to preclude the debtor's subsequent possession of the property even if only as beneficiary of the wife's ownership. Since the bankruptcy court had dispossessed the debtor of the property, only the bankruptcy court could restore the debtor to possession.

The Bankruptcy Court stated:

> During the pendency of a Chapter 11 proceeding, and in aid of its jurisdiction, the bankruptcy court having been clothed with the exclusive jurisdiction to deal with property of a Chapter 11 estate, has the inherent power to enjoin debtors, insiders and their agents, including attorneys, from attacking sales of estate property in State courts, to prevent a debtor from regaining title to estate property by circumventing and negating the bankruptcy process, to enforce its valid orders, and to prevent the debtor and the debtor's agents from injuring third parties by misconduct which is determined to be both fraudulent and vexatious. (App. 44-45)

Resp. Br. 11. Mrs. Allnutt's interest in the property. Mrs. Allnutt's claim to tenancy by the entireties (other co-ownership) is that the property was purchased with money jointly borrowed with her husband and jointly owned in tenancy by the entirety when the bank made the loan. This money was used to purchase the equipment. Tangible property purchased with funds owned in tenancy by the entirety are impressed with tenancy by the entirety status. *Beard v. Beard,* 185 Md. 178, 44 A.2d 469 (1945); *Brell v.*

Brell, 143 Md. 443, 122 A.635. Mrs Allnutt never conveyed her interest in the property and it remained in tenancy by the entirety.

2. RES JUDICATA, COLLATEAL ESTOPPEL, EQUITABLE ESTOPPEL AND WAIVER

Resp. Br. 12. The principles of the doctrines of res judicata, collateral estoppel, equitable estoppel and waiver do not apply.

(1) The claim presented in the current action is not identical with the claim determined in the prior adjudication, Mrs. Allnutt was not a party to the prior action. The issue of whether Mrs. Allnutt was a co-owner was not addressed or determined. Mrs. Allnutt's failure to assert her claim to co-ownership when the sale order was being presented was not a breach of duty to speak up. Mrs. Allnutt was a third-year high school drop out in 1957 to get married and some years later passed a G.E.D. examination for high school equivalency. She had no knowledge of the intricacies of bankruptcy and real estate law. Neither the court nor the bankruptcy trustee regarded her as of sufficient importance to summons or even to call her as a witness although she was right in front of them.

3. THE CLAIMS AND ISSUES PRESENTED BY THE PETITION ARE IMPORTANT FOR CONSIDERATION BY THE COURT.

Bankruptcy law is invoked by thousands of persons and businesses and every state of the union. By preempting bankruptcy for federal regulation, it was recognized that uniformity in its application and administration is a national objective. In *Gekas v. Pipin (Met-L-Wood Corp.)* 861 F.2d 1012, 1016 (7th Cir. 1988) the court noted that "under sec. 363, the trustee or debtor in possession is the seller and the

bankruptcy court gets involved only through the requirement of notice and hearing. Actually the statute fails to define the court's role clearly, but the practice is that the bankruptcy judge, following the hearing, will issue an order authorizing the sale (if he decides the property should indeed be sold), and after the sale is made he will issue a second order, confirming the sale."

Sanctions of an individual attorney in itself is of no consequence to this court, but if the bases for sanctions involved principles and decisions of a bankruptcy court at variance among the lower courts, review by this court is appropriate. The denial of the right of a wife to litigate her claim and imposition of over $100,000 in sanctions for filing for a judicial determination of her interest in property cannot and should not be sustained on the basis that she is inheritantly in privity with and bound by her husband's actions. The significance on women's rights in the legal system is sufficient that this case deserves review by this court.

CONCLUSION

Wherefore, the petitioner, Tracy E. Mulligan, respectfully request that this court grant petition for Writ of Certiorari.

Respectfully submitted,

Tracy E. Mulligan
Counsel of Record, Pro Se
416 Hungerford Drive
Suite 215
Rockville, MD 20850
(301) 340-9670

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Letter to Kevyn D. Orr, Deputy Director
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Exhibit 2:
Letter to Kevyn D. Orr, Deputy Director
from Fred W. Allnutt, Sr.
dated August 27, 1999 ..... App. 26

Exhibit 3:
Extract of Affidavit and
Transcript of Hearing
dated September 19, 1994 ..... App. 37

EXHIBIT 1

Fred W. Allnutt, Sr.
10370 Baltimore National Pike
D-130, Suite 605
Ellicott City, MD 21042
Phone # 410-984-6476

August 27, 1999

Kevyn D. Orr, Deputy Director
Executive Office for Unites States Trustees
Department Of Justice
901 E Street, NW, Suite 700
Washington, DC 20530

Re : Case No. 92-5-7401, U.S.B.C., D. OF Md.

Dear Mr. Orr:

In our telephone conference of August 18, 1999, you requested copies of my correspondence with W. Clarkson McDow, Jr., the United States Trustee for Region Four, and other documentation that would support my claim that McDow and his panel trustee, Mark J. Friedman, have failed to comply with the laws and requirements pertaining to bankruptcy trustees. On August 18, 1999, I provided you a copy of my April 5, 1999 letter to Mr. Joseph Patchan, my May 6, 1999 letter to McDow, and the May 28, 1999 letter I received from McDow. At that time I confirmed that I would be sending you my other letters to McDow and the additional documents that support my claim. My other letters to McDow, including the three letters I faxed to you

on August 18, 1999, are attached to this letter (**Exhibits A through G**). The additional documents are outlined below.

However, before I demonstrate the overwhelming justification for an investigation and audit of my bankruptcy estate, I want to clear the air about myself and to point out the irrelevance of any attach *ad hominem* concerning my political views.

You may have already been told that I am a "tax protestor" who tried to defraud the government out of millions of dollars in taxes. If you have not yet been told this, you no doubt will be. However, nothing could further from the truth. I have had disagreements with the IRS regarding the applicability of the income tax law and, because I genuinely believed that the income tax law did not apply to me, I did not file 1040 returns for years 1981 to 1996. However, in 1997, I filed all 1040 returns for the 1981-1996 tax years, and I have timely filed for 1997 and 1998.

Due to legal technicalities beyond the scope of this letter, the Unites States Tax Court found me liable for a large amount of taxes for the 1981-1986 tax years, even though I owed no tax whatsoever for these years. On October 9, 1992, the IRS seized my business, forcing me to file bankruptcy. However, my views regarding the applicability of the income tax and the filing of returns are behind me now, and they are not either the purpose of this letter or the reason for my requesting an investigation and audit of my bankruptcy.

With these few words concerning my past behind me, I will now address the many problems concerning the accounting of my estate, the numerous undocumented wire transfers between the many different bank accounts, the hundreds of thousands of dollars of undocumented "write-off's" of debts owed to my estate without court approval, the lack of any formal accounting records for my estate, the lack of a final account of my estate's assets--and shows that there

exists evidence, valid evidence taken from court filing and other documents created by McDow's panel trustee, Mark J. Friedman, to support an investigation and audit of my bankruptcy estate.

I became concerned with the accounting of my estate's assets in September 1994, after I begin to notice discrepancies in the financial accounting, *i.e.*, the Monthly Operating Reports filed in my bankruptcy case by Friedman. The discrepancies I noted were:

1. Friedman was consistently reporting negative income.
2. Friedman's Monthly Operating Reports balances were different then the preceding Reports ending balance.
3. The total of the numerous bank balances listed in the Monthly Operating Reports did not equal the total cash amount shown in the Monthly Operating Reports.

On September 18, 1994, in an attempt to determine the extent of these discrepancies, I performed an analysis (**Exhibit H**) of the cash receipts and bank balances listed in the Monthly Operating Reports for the report period commencing August 1, 1993 and ending July 31, 1994. Through my analysis, I established that Friedman failed to report cash receipts of $596,532.02 during this reporting period.

After I informed Friedman of this discrepancy, I received an analysis dated September 29, 1994 (**Exhibit I**) from C.W. Amos, the accounting firm Friedman employed to

perform the accounting for my estate. In its cover letter, Amos stated, "Your analysis correctly identified a difference between the monthly charge in Accounts Receivable and the collection of cash. In our analysis we have identified the three different types of transactions that reconcile to the column in your schedule labeled 'Receivables Not Accounted For.'" Then, in its analysis, in the column titled, "Receivables Not Accounted For," Amos lists the amount of missing cash I showed on my analysis. In the column titled "Apparent Errors on Schedule," Amos identifies three errors in my analysis. In its column titled "Adjusted Receivables Not Accounted For," Amos shows $599,977.08 in cash is missing and unreported for the period August 1, 1993 to July 31, 1994, some $3,500 more than I determined in my 9/24/94 analysis.

In its other columns, Amos listed numerous dollar of swaps and write-offs (none of which are listed in Friedman's Monthly Operating Reports), and $12,192.00 under the heading "Allowance for Doubtful Accounts." Amos used these amounts to make its analysis balance. However, Amos did not provide supporting documentation for the swaps and write offs, nor explain how a "doubtful account" (receivables that may not or may not be received) can be used to balance out missing cash.

By letter to Amos dated September 29, 1994 (**Exhibit J**), I pointed out numerous inconsistencies in their September 29th analysis, and requested that they supply certain records to me. Amos, in lieu of answering my questions and providing me the records I requested, forwarded a second analysis dated October 4, 1994 (**Exhibit K**). Therein, Amos stated that it "understood" my "desire for more details" regarding "the changes in the accounts receivable balances from one operating report to the next" (Underline added). Amos' "second" analysis was obviously modified with the intent of reconciling the inconsistencies I noted in Amos'

"first" analysis. Some of the inconsistencies and discrepancies between Amos' first and second analysis are:

I. Monthly operating report period 11/1/93 - 12/31/93:

- ⇒ Amos' first analysis lists "A/P & A/R Swap" of $119,093.83.
- ⇒ Amos' second analysis lists "A/P & A/R Swap" of $218,641.00.
- ⇒ Amos' first analysis lists "Write-offs of Accounts Receivable" as $0.00
- ⇒ Amos' second analysis, which titled this category as "Reduction for Adjustments and Credit Memos," lists $85,783.
- ⇒ Amos' first analysis does not contain a category titled "Previously Unrecorded Sales."
- ⇒ Amos' second analysis contains a category titled "Increase For Previously Unrecorded Sales" and lists $164,095 in this category.
- ⇒ Amos' first analysis does not contain a category titled "Item not listed on Cash Receipts Schedule (Bracciale)."
- ⇒ Amos' second analysis contains a category titled "Item not listed on Cash Receipts Schedule (Bracciale)" and lists $2,297 in this category.

In just five days (September 29th to October 4th) that included a weekend, Amos created a second analysis and modified it sufficiently to establish a difference of $351,722.17 for this reporting period between the dollar values provided on the first analysis and the dollar valued provided on the second analysis. Both analyses covered the same reporting period. This alone established that neither Friedman nor Amos maintained proper accounting records in my estate--but there is more:

II. Monthly operating report period 1/1/94 - 1/31/94:

⇒ Amos' first analysis lists "Write-offs of Accounts Receivable" as $48,746.

⇒ Amos' second analysis, which titled this category as "Reduction for Adjustments and Credit Memos," lists $50,190.

⇒ Amos' first analysis does not contain a category titled, "Increase for Previously Unrecorded Sales."

⇒ Amos' second analysis contains a category titled "Increase for Previously Unrecorded Sales" and lists $900.00 in this category.

III. Monthly operating report period 2/1/94 - 2/28/94:

⇒ Amos' first and second analysis both list lists "A/P & A/R Swap" for this report period as $117,408, but they contradict the Monthly Operating Reports Friedman filed in this case. The Monthly Operating Report for the period 1/1/94 - 1/31/94 shows a total A/P balance of $121,888.18.[1] Of this amount, $13,390.50 was paid via checks issued by Friedman[2] and $25,953.39 remained unpaid.[3] By subtracting the $13,390.50 and the $25,953.39 amounts from the $121,888.18, we establish that the maximum amount Friedman could have swapped during this report period is $82,544.29. Therefore, the $117,708 amount Amos lists is wrong by at least $34,863.71

⇒ Amos' first analysis lists $17,435 in "Write-offs of Accounts Receivable."

⇒ Amos' second analysis, which titled this category as "Reduction for Adjustments and Credit Memos," lists $18,975.

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[1] See: monthly operating report for 1/1/94 - 1/31/94, Docket No. 295, page 10.

[2] See: monthly operating report for 2/1/94 - 2/28/94, Docket No. 304, page 22.

[3] See: monthly operating report for 2/1/94 - 2/28/94, Docket No. 304, page 9.

⇒ Amos' first analysis does not contain a category titled, "Increase for Previously Unrecorded Sales."

⇒ Amos' second analysis contains a category titled "Increase for Previously Unrecorded Sales" and lists $1,540 in this category.

IV. Monthly operating report period 3/1/94 - 3/31/94:

⇒ Amos' first analysis lists $19,946.87 in "Write-offs of Accounts Receivable."

⇒ Amos' second analysis, which titled this category as "Reduction for Adjustments and Credit Memos," lists $23,962.

⇒ Amos' first analysis does not contain a category titled, "Increase for Previously Unrecorded Sales."

⇒ Amos' second analysis contains a category titled "Increase for Previously Unrecorded Sales" and lists $3,745 in this category.

V. Monthly operating report period 4/1/94 - 4/30/94:

⇒ Amos' first analysis lists $7,786.62 in "Write-offs of Accounts Receivable."

⇒ Amos' second analysis, which titled this category as "Reduction for Adjustments and Credit Memos," lists $10,975.

⇒ Amos' first analysis does not contain a category titled, "Increase for Previously Unrecorded Sales."

⇒ Amos' second analysis contains a category titled "Increase for Previously Unrecorded Sales" and lists $2,443 in this category.

VI. Monthly operating report period 5/1/94 - 5/31/94:

⇒ Amos' first analysis lists $10,342 in "Write-offs of Accounts Receivable."

⇒ Amos' second analysis, which titled this category as "Reduction for Adjustments and Credit Memos," lists $10,882.

⇒ Amos' first analysis does not contain a category titled, "Increase for Previously Unrecorded Sales."

⇒ Amos' second analysis contains a category titled "Increase for Previously Unrecorded Sales" and lists $540 in this category.

Further, in each Monthly Operating Report Friedman filed for the 1994 calendar year reflects a negative "Contract

Revenue." However, this is incorrect. The following is a list of what was actually received by Friedman and what was actually reported in his monthly operating reports:

Report Period	Amount Actually Received	Amount Actually Reported
1/1/94-1/31/94	455,250.00	(48,746.00)
2/1/94-2/28/94	21,965.00	(17,435.00)
3/1/94-3/31/94	11,974.00	(19,947.00)
4/1/94-4/30/94	19,860.00	(8,531.00)
5/1/94-5/31/94	17,732.00	(10,342.00)
6/1/94-6/30/94	65,171.00	(183,362.00)
	592,192.10	(288,363.00)

Friedman misreported the "Contract Revenue" for this six-month period by $880,555.10. Friedman never raised his Monthly Operating Reports to correct this error, nor has he explained or justified how he arrived at this large discrepancy.

In each instance, the "Contract Revenue" reported by Friedman in his Monthly Operating Reports are the same amounts Amos listed on its first analysis as the "Write-offs of Accounts Receivable." (See column six on Amos' September 29, 1999 analysis, Exhibit I). This is either sheer stupidity, or there are no reliable accounting records existing in my estate.

On January 3, 1995, I received a third analysis from C.W. Amos (**Exhibit L**) that showed Adjustments/Credits of $275,869 in September 1994 and $12 in October 1994. A review of Friedman's Monthly Operating Reports revealed that none of the Adjustments/Credits listed on this analysis were listed in Friedman's Monthly Operating Reports.

On March 28, 1995, I received a fourth analysis from C. W. Amos (**Exhibit M**) that showed Adjustments/Credits of $3,452 in November 1994, $72,096 in December 1994, and $2,660 in January 1995. These adjustments/Credits are not listed in the Monthly Operating Reports filed by Friedman.

On August 29, 1997, I received a fifth analysis from C. W. Amos (**Exhibit N**) dated August 1997. While this analysis shows zero balance for each reporting period, it fails to list the $738,902 in Adjustments/Credits and non-listed items, and the $173,266 in unrecorded sales Amos listed in its earlier analyses, which makes those zero balances erroneous. Also, for the report period 1/1/94 to 1/31/94, Amos lists negative income of $61,482 while Friedman, in his Monthly Operating Report for this same report period, lists a negative income of $48,746, a difference of $12,736. Therefore, either Friedman's Monthly Operating Report or Amos' analysis, or both, are incorrect.

In an effort to justify the inconsistencies and the discrepancies in the Monthly Operating Reports, Friedman/Amos provided me with numerous ever-changing analyses that purport to summarize what happened to my estate's assets, but no actual accounting records to show what really did happen to those assets. Further, Friedman/Amos did not provide credible accounting records to the Kemplin Review Team for their review even though they were requested. Hence, it appears that neither Friedman nor Amos created proper accounting records for my estate that comply with Generally Accepted Accounting Principles (GAAP). If proper accounting records did exist, it would not have been necessary for Friedman's/Amos' to create the numerous analyses with the big dollar differences and conflicting amounts that they contain.

Review performed on accounting records prepared in accordance with GAAP would all arrive at the same conclusions and provide the same answers in each instance,

and any discrepancy or inconsistency noted could easily be traced and resolved. However, without a proper accounting, the discrepancies and inconsistencies in the financial records of my estate cannot be reconciled aside from an audit--as has been proven by the numerous analyses prepared by Friedman/Amos.

Friedman's/Amos' effort to explain away the accounting discrepancies in the Monthly Operating Reports through five (5) different ever-changing analyses is compelling proof that a proper accounting system does not exist.

The only conclusion to draw from the many hundreds of thousands of dollars of discrepancies in Friedman's Monthly Operating Reports, and Amos' analyses, is that no credibility can be given to any of Friedman's accounting and that a fraud audit is necessary to determine the disposition of my estate's assets.

The Kemplin Report

On November 18, 1994, I employed the Kemplin Group, an independent accounting firm, to contact an independent review of the financial records of my estate, and to evaluate the accounting system employed by Friedman/Amos. The Kemplin Group engaged in three other separate and independent professional accounting firm to make up the "Kemplin Review Team." On January 26, 1995, the Kemplin Review Team conducted their review and evaluation of my estate's records at the offices of C.W. Amos. Thereafter, the Kemplin Group issued a report titled the "Kemplin Report" (**Exhibit O**) wherein they identified many serious discrepancies in the accounting records, and

they also found that important accounting records did not exist. The Kemplin Group learned much from Michael L. Atkinson, who represented himself as "the Amos employee liaison to the team," and who stated that "he was responsible for the recording of all accounting activity related to the [Allnutt] Estate." Atkinson made the following asseverations to the Kemplin Group:

1. That when my estate was turned over to the trustee Friedman, Great Plains Accounting Software was being used.
2. That Friedman continued to use the Great Plains Accounting Software through April 30, 1993....
3. That my estate's historical computerized accounting system (Great Plains) was dumped and discarded in May 1993 in order to make room for a newly purchased Libra accounting system.
4. That there was no effort to retain any of my estate's historical records or system in any form.
5. That the Libra Software was used through 12/31/93 and then discontinued because of their [Amos'] inability to operate it.
6. That effective 1/1/94 trustee Friedman employed no automated accounting software.
7. That trustee Friedman retained the services of my bookkeeper, Joanne O'Connell, who continued to maintain the A/R cards.
8. That the A/R cards are the main source of all accounting transactions.
9. That no subsidiary ledgers and journals were being provided to the Kemplin Group because none existed.
10. That he routinely entered 'Accounts Receivable/Accounts Payable swap[1] transactions via telephone calls from Friedman.

The individual Affidavits of the Kemplin Review Team members (attached to Kemplin Report) document many inconsistencies and inaccuracies in the Monthly Operating Reports, and they attest to the lack of proper accounting books and records.

Cynthia Kemplin Affidavit

> "Records were found to be incomplete, inconsistent and inaccurate in many instances. Mr. Michael Atkinson was present. He attempted to be helpful in obtaining and explaining

> missing and incomplete records, but was unable to in most cases. Mr. Atkinson appeared to be embarrassed and apologized that the accounting was handled poorly. He claims to be responsible for all of the data entry on the Allnutt project.
>
> "Kemplin was unable to ascertain why there appear to be numerous discrepancies, inconsistencies, and errors in the accounting for the Allnutt Estate, due to not being provided complete accounting records.
>
> "Based on the information provided to us, Kemplin Group does not believe that it is possible for anyone to ascertain the accuracy of the accounts receivable.
>
> "It is apparent from the lack of follow through, cooperation and accountability on the part of Piper & Marbury and CW Amos, that without a formal audit of all of the records, that there will never be a proper accounting of where all of the funds have gone, if

they were all collected and if there was indeed mismanagement of funds and assets in this very complicated case, contrary to the fax we received in this office January 17th, 1995 from Mr. Mark, Friedman and his letter in response to our March 1st request for production of documents and historical records (from 1981 thru present) not received at the field review, March 6st, 1995.

"Mr. Friedman's present position appears to be that he will provide no other information pertaining to this case, including that which he has already promised." [End quotation]

Jeffrey M. Coleman Affidavit

"I noted a small transposition error on the court forms and was unable to tie in the A/R (see Schedule). When I requested an explanation from Mr. Atkinson, he refused to answer my questions.

"Without seeing all of the information that exists, it is difficult to draw a conclusion as to the propriety of the information. At the least, I would note that the accounting firm, under the direction of the Trustee, has expended a lot of money in professional fees and have not been able or willing, to share that information. To redo the computer system, spend $300,000 to $500,000 in accounting fees and not to have complete sets of books and records and good accounting workpapers is a mystery to me. Similar companies would be able to manage their business for much less.

"Trustee kept their own bank accounts, monies were transferred in and out though the time period.

"The Accounts Receivable reports submitted to the bankruptcy court for the period October 1992 through November 1994, reflected discrepancies of $1,860,072 between beginning and ending balances, per the attached report." [End quotation]

Mr. Coleman, to support his finding that $1,860,072 was missing from my Estate's Accounts Receivable from October 1992 through November 1994, attached a manual spreadsheet (**Exhibit P**) to his Affidavit. I duplicated Coleman's spread sheet on a computer spread sheet **Exhibit P**) and found two errors that adjusted the missing accounts receivable amounts to $1,850,573. I have duplicated Coleman's spreadsheet with my corrections:

Reporting period	A/R Begin	Billings	Collections	Other	A/R Ending	Difference
Oct 9 to Dec 31, 1992	2,594,632	1,642,739	1,502,181	0	2,524,426	210,764
Jan 1 to Apr 30, 1993	2,524,426	2,169,332	2,169,332	0	2,188,365	314,932
May 1 to July 31, 1993	2,188,365	2,956,248	1,733,464	0	2,654,560	756,589
Aug 1 to Oct 31, 1993	2,654,560	2,249,519	1,429,843	377,501	3,078,741	17,994
Nov 1 to Dec. 31, 1993	3,078,741	107,408	433,416	0	2,528,283	224,450
Jan 1 to Jan 31, 1994	2,528,283	48,796	455,414	0	1,958,797	162,868
Feb 1 to Feb 28, 1994	1,958,797	17,435	25,902	0	1,801,989	148,341
Mar 1 to Mar 31, 1994	1,801,989	19,947	39,975	0	1,770,068	11,893
Apr 1 to Apr 30, 1994	1,770,068	(6,693)	21,698	0	1,741,676	1
May 1 to May 31, 1994	1,741,676	(9,510)	18,565	0	1,703,235	10,366
June 1 to June 30, 1994	1,730,235	0	66,832	183,362	1,454,161	(1,120)
July 1 to July 31, 1994	1,454,161	0	0	0	1,454,161	0
Aug 1 to Aug 31, 1994	1,454,161	0	15,200	0	1,448,961	10,000
Sept 1 to Sept 30, 1994	1,448,961	0	160,922	276,869	1,011,170	0
Oct 1 to Oct 31, 1994	1,011,170	0	14,500	12	996,658	0
Nov 1 to Nov 30, 1994	996,658	0	7,813	3,452	981,898	3,495
					Total	1,850,573

Melvin E. Casby Affidavit

"C.W. Amos ceased using Libra accounting system effective December 31, 1993. C.W. Amos did not use an automated accounting software system from January 1, 1994 until January 26 1995, time of Kemplin Group accounting analysis. When I asked Mr. Atkinson, of Amos to provide a 1994 general ledger, he said, 'we closed 1993 with Libra and did not maintain its general ledger.' I then asked for the manual general ledger that replaced the automated general ledger, at which Mr. Atkinson responded, 'we did not maintain-a general ledger in any form after December 31, 1993.' I then asked how then could he prepare financial statements, and he responded, 'we use the accounts receivable cards and subsidiary journals.'

"Trustee provided list of 8 accounts receivable that had been written off that totaled $597,084. The posting of only two of the accounts could be verified on the accounts receivable cards provided. They were Ratrie Shipquarters for $178,659 in June 1994 and New Panorana Development Corporation for $31,813 in September 1994, Leaving Pulte for $57,084 in November 1993; Bituminous Construction for $27,068 in January 1994; Bituminous (Hanover II project) Construction (Hanover III project) for $15,376 and $1,293 in January 7, 1994; Heritage Heights Limited Partnership for $46,374 in September 1994; Olney Land Limited Partnership for $165,584 identified and $79,403 that was not identified in September 1994; and Kennard Warfield for $70,596 in December 1994 totaling $462,778, or 77.5% of reported write-offs

were unable to be verified to and supported by the accounts receivable cards provided.

"Additionally, while searching the accounts receivable cards, I discovered an unidentified $42,430 credit posted to Lou Spicer on the Fallstone project indicating that not all write-offs in excess of $10,000 was provided to us for review as indicated by trustee.

"Also while reviewing the accounts receivable cards I discovered a $2,783.50 credit issued to Valley Enterprises with the explanation of duplicate billings. However, there were only two debits posted to the accounts receivable card totaling $2,783.50 making it impossible to involve duplicate billings unless another receivable was kept and not provided for review.

"Requested and approved documentation was not present at the January 26, 1995 meeting for review and analysis.

"Source documents for adjustments, write-offs, and payables/receivables off-sets were not available to verify accuracy and correctness of adjustments, write-offs and off-sets.

"Accounting policies and procedures for the Allnutt Estate fail to conform to standards required of the Generally Accepted Accounting Principles." [End quotation]

Wayne L. Greenfeld Affidavit

> "Upon request, Mr. Atkinson indicated that all computer related activity ceased effective 12/31/93 and if any other reports were run, they would have been used via diskette, then discarded. He also indicated that he was unable to provide us any standard accounting records for activity since 1/1/94, stating that some journals may exist but the A/R cards are the main source of the accounting transactions and that he would initiate swap transactions regularly via telephone calls from Mr. Friedman.
>
> "Item #1, Pulte re: Christie $58,865 - Since the A/R card doesn't contain a general ledger reference, and the general ledger consists of undated, summary CR (Cash Receipt) entries, I was unable to trace the transaction to the general ledger. I was unable to trace the rest of the items since the write-offs occurred after 12/31/93, the last report date of general ledger activity provided to me." [End quotation]

McDow's Review Of Financial Records

Recently, *via* a Freedom of Information Act request, I received from McDow and undated, unsigned, and unpublished "Summary of Review Of Financial Records of Mark J. Friedman, Trustee for Fred W. Allnutt, SR. Case No. 92-5-7401-JS" with exhibits (**Exhibit R**). To help identify certain specific pages therein, I added page numbers to the lower left corner of each page and will use those page numbers as reference.

It is clear from this Summary, and the exhibits attached to it, that the bankruptcy analysts working for McDow did not review any accounting records. Some "records" were provided to McDow's analysts (Exhibit R, pages 2 and 6), but they were not accounting records that summarized Friedman's financial transactions. Some of the records were simply underlying documents that would support individual entries to the subsidiary accounting ledgers and journals, but they would not qualify as accounting records. McDow's analysts should have demanded to see and review the General Ledgers, and Journals. A proper and meaningful review would consist of:

- ⇒ Reviewing the Balance Sheet and Income Statement to determine that they balanced.
- ⇒ Verifying that the statement of cash flows balances to the Balance Sheet.
- ⇒ Reconciling the subsidiary ledgers to the Balance Sheet.

- ⇒ Reconciling the cash account to the bank statements.
- ⇒ Reconciling the accounts receivable (A/R) balance and the accounts payable (A/P) balance to the A/R and A/P ledgers.
- ⇒ Verifying the A/R balance by taking the beginning A/R, add the sales (from the Sales Journal), subtract the cash receipts (from the Cash Receipts Journal), and add or subtract approved adjustment to arrive at the ending A/R. McDow's analysts would than have to determine if proper

internal control were maintained over the A/R. For example, they should determine if the positions or duties for cash collections, record payments and cash receipts, and write-offs or adjustments were kept separate.[4]

⇒ Verifying the A/P balance by taking the beginning A/P, subtract the cash disbursements (from the Cash Disbursement Journal), add the purchases (from the Purchase Journal), and add or subtract approved adjustment to arrive at the ending A/P. Here, it is not necessary that A/P duties are assigned to separate persons as long as someone else signs the checks besides the person who writes the checks and does the write-offs.[5]

⇒ After confirming that the ledgers and journals agree, test the validity of the entries by testing a sample of cash receipts, disbursements, sales invoices, and purchase invoices to determine if statistically everything is okay. For items over a certain dollar amount, say $10,000, every item would be checked (This would have allow McDow's analysts to say that the accounting records are materially correct). A review has a lot less sampling, questioning, and testing than an audit. However, as is the case with Friedman, the greater the lack of control, the more the testing that would have to be done.

It is clear from the list of documents provided by Friedman/Amos that McDow's analysts did not perform any of the above steps during their review. Therefore, it was not possible for them to determine what error(s) exist in the accounting records of my estate, and it makes Mcdow's review unprofessional and suspect.

Further, while the Summary does not describe the responsibilities of McDow's analysts, it does show that neither McDow nor his analysts addressed the inconsistencies and discrepancies outlined in the Kemplin Report. McDow did not contract the Kemplin Group or me to discuss those inconsistencies and discrepancies. McDow did not even notify us that he was performing a "review" of my estate's books and records. I had to discover that a "review" had been performed through a Freedom Of Information Act request. Lastly, McDow has never issued a formal report of his findings.

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[4] If the person who collects the cash can also record the cash receipts and write-offs, that person can steal the cash and write off the adjustment. This is exactly the scenario that Friedman set up. He collected the cash, and he made adjustments. In the Kemplin Report, Cynthia Kemplin quoted Michael F. Atkinson, who represented himself as the "Amos employee liaison to the Kemplin team," as stating that "he would initiate 'Accounts Receivable/Accounts Payable swap' transactions routinely *via* telephone calls from Mr. Friedman (Kemplin Report, Attachment Number 1 to Affidavit of Cynthia Kemplin).

[5] Friedman maintained complete control over the disbursements. He wrote the checks, signed the checks, and controlled the write-offs.

First National Bank Account

Friedman provided account numbers for each of the other bank accounts listed in his Monthly Operating Reports

(Commercial and Farmers Bank, account number's 1014872603, 1014915503 and 4010797503; Maryland National Bank, account number's 3822632 and 1030444), except for the First National Bank of Maryland bank account. In the list of "Bank Statements" (Exhibit R, page 7), Friedman provided to McDow's analysts, the First National Bank of Maryland bank account is not listed as one of Friedman's bank accounts. Therefore, it is quite possible that McDow's analysts did not know of this account. Further, it is also possible that the "Copies of all bank statements" (Exhibit R, page 6, item 3) provided by C.W. Amos to McDow's analysts did not include the bank statements for the First National Bank of Maryland bank account if it does exist.

On November 19, 1997, I served a subpoena on each bank listed by Friedman in his Monthly Operating Reports, and requested copies of the bank statements for each specific bank account. By letter dated December 4, 1997 (**Exhibit S**), Marcella L. Charles, Legal Assistant at First National, advised me that First National Bank had been unable to locate any account under the several possibilities listed on my subpoena. The possibilities I listed included Friedman's name, social security number, the F.I.N. number he used on the other bank accounts, and the name of Friedman's law firm, Piper and Marbury. By letter dated December 20, 1997 (**Exhibit T**), I asked Friedman to provide the account number to me, but Friedman refused to provide it.

Friedman maintained six different bank accounts in my estate, when one would have been adequate, and he made many undocumented wire transfers between these accounts which the Kemplin Review Team was unable to trace. My efforts to determine the extent of Friedman's wire transfers are stymied because I do no have bank statements from the First National Bank account.

Friedman's failure and refusal to provide an account number for the First National Bank account, and the First National Bank being unable to find such an account, infers that this account does not even exist. Friedman's showing of money transferring through this seemingly nonexistent account implies that Friedman has committed fraud.

Discrepancies in Checks

Attached to the Monthly Operating Reports filed by Friedman is a list of the checks and wire transfer for each reporting period. I posted those checks and wire transfers on a spreadsheet and found that they total $16,458,507.94 (**Exhibit U-V**). The cumulative totals of the checks and wire transfers listed in Friedman's Monthly Operating Reports, under "Total Cash Receipts," is $16,152,427.85, a discrepancy of $306,080.09 ($16,458,507.94 minus $16,152,427.85 equals $306,080.09).

Total Discrepancies

On December 14, 1994, I performed an analysis of the Sales and Receipts shown in the Monthly Operating Reports filed by Friedman for the reporting period October 9, 1992 through July 31, 1994. Recently, I updated this analysis to include the period August 1, 1994, through March 31, 1995 (**Exhibit W**). The actual dollar values listed in Friedman's Monthly Operating Reports for the period commencing October 9, 1992 and ending March 31, 1995 show unposted Cash Receipts of $1,804,252.63.

The unreported Cash Receipts of $596,532.02, unrecorded sales of $173,263, unposted checks of $306,080.09 and unapproved adjustments, credits, write offs, and swaps of $789,394, total another $1,865,269.11.

Therefore, as best as I can determine from the accounting provided in the Monthly Operating Reports filed by Friedman, and the analyses of that accounting by Friedman/Amos, the discrepancies in the accounting of my estate's assets during the $2^1/_2$ years Friedman filed Monthly Operating Reports total $3,669,521.74.

Lack of Final Account

Friedman has not filed any accounting of my estate's assets since May 2, 1995 (for the period ending March 31, 1995), a date over four years ago, nor has he filed a final account of my estate's assets. The Monthly Operating Reports Friedman filed for the period commencing October 9, 1992, and ending March 31, 1995, as shown above, are full of errors, inconsistencies, and discrepancies, and they

show that over 3.5 million dollars of my estate's assets are missing through March 31, 1995. Since Friedman has not filed any accounting for the period April 1, 1995 to the present, and since Friedman has not filed a final account of my estate's assets, the total amount of missing assets cannot be fully determined.

In closing, in our telephone conference of August 18, 1999, you stated to me that, because of the large discrepancies in the accounting of my estate, an investigation is in order. In light of the many discrepancies and inconsistencies I have outlined above, I believe you will concur that both an investigation and a fraud audit are in order.

Sincerely,

Fred Allnutt

EXHIBIT 2

Fred W. Allnutt, Sr.
10370 Baltimore National Pike
D-130, Suite 605
Ellicott City, MD 21042
Phone # 410-984-6476

August 27, 1999

Kevyn D. Orr, Deputy Director
Executive Office for Unites States Trustees
Department Of Justice
901 E Street, NW, Suite 700
Washington, DC 20530

Re : Case No. 92-5-7401, U.S.B.C., D. OF Md.

Dear Mr. Orr:

The purpose of this letter is to supplement my August 23, 1999 letter by bringing two additional issues to your attention. The first issue I will present is the current status of the books and records pertaining to my estate. The second issue I will present is the sale of certain assets of my estate, known as the "Race Car Assets," for a fraction of their estimated value to an "insider."

Books and Records

On October 22, 1998, the panel trustee administering my estate, Mark J. Friedman, filed an Application For Final Decree To Close Bankruptcy Case Of Fred W. Allnutt, Sr. (Docket Number 698). Even though I was listed on the

Certificate Of Service, Friedman did not send a copy of his Application to me. I learned of its filing after I received the bankruptcy court's Order Constituting Final Decree To Close Bankruptcy Case Of Fred W. Allnutt, Sr. (Docket Number 704) on December 8, 1998. Among Friedman's many "requests," Friedman requested the bankruptcy court to "...authorize the Chapter 11 Trustee (him) to dispose of his books and records relating to the bankruptcy case..." (page 3, ¶ 3, item (vii)).

Shortly after I received the bankruptcy court's Order, I filed a Motion To Alter Or Amend (Docket Number 705), and ask the court to allow me to retrieve all of the books and records relating to my estate. Friedman objected to my Motion (Docket Number 706) and I responded (Docket Number 709). My arguments against the destruction of any of my estate's books and records are:

- ⇒ Friedman and his law firm failed to disclose some fifty-six connections with the creditors and customers of my estate, most of which represented serious conflicts of interest.
- ⇒ Friedman and his law firm filed false verified statements stating that they had no connections or conflicts of interest.
- ⇒ Friedman and his law firm started representing numerous creditors and customers of mine after I filed for bankruptcy, creditors and customers that Friedman became privy to through his administration of my bankruptcy.
- ⇒ Friedman and his law firm accepted payment for services rendered to creditors and customer of mine while failing to collect money due my estate from these same creditors and customers.
- ⇒ Friedman and his law firm were General Counsel for Ryland Homes, a large customer of mine when I filed

bankruptcy, and Andre W. Brewster, who is a partner in Friedman's law firm, served as Ryland's Chairman of the Board of Directors, which represents a very serious conflict of interest. Friedman did not disclose this connection, a connection he

continued to maintain after he became trustee of my bankruptcy, and wrote off thousands of dollars of Accounts Receivable to Ryland without court approval.

⇒ Friedman's law firm was Bond Counsel for the Maryland Comptroller, another creditor in my bankruptcy.

⇒ Friedman sold two building lots I owned at prices well below market value to Ryan Homes, who was both a customer of mine and a client of Friedman and his law firm.

⇒ Friedman employed his law firm as his attorneys and assumed the roll of lead attorney in my bankruptcy. Friedman billed my estate millions of dollars for attorney work, much of which was trustee work, and then billed my estate a second time for trustee work.

⇒ Friedman and his law firm had familial connections with the IRS, my largest creditor. Herbert Seidman, who is the District Director of the IRS, has a son, Lawrence R. Seidman, who is a member of Friedman's law firm, and assistant District Counsel for the IRS, Elizabeth Henn, IRS counsel in my bankruptcy case, is married to William Henn, another member of Friedman's law firm;

The bankruptcy court denied by Motion To Alter or Amend and I have appealed to the District Court for relief. My Appeal Brief is attached as **Exhibit 1**.

Because of my appeal, the bankruptcy court's order granting Friedman permission to destroy my estate's books and records is not final. However, I believe that it would be prudent for you to immediately take possession of all of my estate's books and records. This should include all accounting records, however incomplete they may be that are in the possession of Friedman and his accounting firm, C.W. Amos.

Race Car Assets

In various pleadings and motions Friedman filed in my bankruptcy case, he identified the Race Car Assets as:

⇒ "race car" (Adversary Proceeding # 93-5146-JS, Docket # 7, page 7 ,line 23);
⇒ "All-aluminum car trailer and contents" (Main case # 92-5-7401, Docket 279, page 4, lines 6 & 7);
⇒ "two engines and certain tools and accessories" (Main case # 92-5-7401, Docket 279, page 4, lines 7 & 8);
⇒ "race car transmission" (Main case # 92-5-7401, Docket 279, page 10, line 1);
⇒ "hydraulic lift" (Main case # 92-5-7401, Docket 279, page 4, line 6);
⇒ "salamander heater" (Main case # 92-5-7401, Docket 279, page 4, line 6);
⇒ "air compressor" (Main case # 92-5-7401, Docket 288, page 2, line 2);
⇒ "a graduated set of three Snap-On brand tool boxes" (Main case # 92-5-7401, Docket 288, page 2, line 3 & 4):

⇒ "extensive array of tools" (Main case # 92-5-7401, Docket entry 279, page 4, lines 11-12);
⇒ "expensive precision tools" (Adversary Proceeding # 93-5146-JS, Docket #7, page 8, line 5);
⇒ "tools used for the race car" (Adversary Proceeding # 93-5146-JS, Docket #7, page 8, line 8);
⇒ "other similar tools" (Adversary Proceeding # 93-5146-JS, Docket #7, page 8, line 9);

⇒ "payments in cash and by check" (Adversary Proceeding # 93-5146-JS, Docket #7, page 8, line 13);
⇒ "household items, hand tools, furniture, jewelry, payments of household expenses, mortgage payments, utility payments, insurance payments" (Adversary Proceeding # 93-5146-JS, Docket #7, page 7, line 24);
⇒ "truck" (Adversary Proceeding # 93-5146-JS, Docket #7, page 7, line 24);
⇒ "tools removed from the business premises" (Adversary Proceeding # 93-5146-JS, Docket #7, page 8, line 23).

Friedman, in his "Motion By Chapter 11 Trustee For Authority To Enter Into Settlement Agreement And Approval Of Compromise Of Claims Between Chapter 11 Trustee And Charles Kevin Evans[1] And Donna Marie Evens" (Docket # 279), specifically the "Settlement Agreement" attached thereto, on page 4, ¶ L., states that Stephen L. Wilcoxon, of Atlantic Auctions, Inc., had valued the race car assets in "a cumulative amount not less than $200,000."

On March 3, 1994, Friedman filed a Notice of Private Sale of Certain Race Car Assets by Mark J. Friedman, Chapter 11 Trustee, to Metro Recovery, Ltd. (Docket #288), but he did not file the Agreement of Sale between him and Metro Recovery. Friedman did not provide a service copy of his Notice of Private Sale to me and I was, therefore, unaware of its existence until after the time for objecting had expired. In his "Notice," Friedman failed to disclose that the Race Car Assets were being sold to an "insider," Charles Lewis Jr., the District Manager for Miller & Miller Auctioneers, Inc., the company to whom Friedman sold over seven million dollars of my assets.

Friedman did not disclose, pursuant to Rule 2014, that the purchaser of the Race Car Assets, Metro Recovery, Ltd., is a company owned and operated by Lewis Friedman, in an obvious attempt to further hide the identity of the purchaser, did not type Lewis' name under the signature line on the Agreement of Sale (**Exhibit 2**). In lieu of Lewis' name, Friedman typed, under the signature line, "Its Duly Authorized Representative" when he knew that Metro Recovery's only "Duly Authorized Representative" was Lewis. Friedman did, however, put his own name under his signature line.

Friedman also failed to comply with Bankruptcy Rule 6004, Use, Sale, or Lease of Property, specifically rule (f), Conduct of Sale Not in the Ordinary Course of Business. Rule 6004 (F) (1) states:

> (1) **Public or Private Sale**. All sales not in the ordinary course of business may be by private sale of by public auction. Unless it is impracticab'e, an itemized statement of the property sold, the name of each purchaser, and the price received for each item or lot or for the property as a whole if sold in bulk shall be filed on completion of the sale. If the property is sold by an auctioneer, the auctioneer shall

file the statement, transmit a copy thereof to the United States trustee, and furnish a copy to the trustee, debtor in possession, or chapter 13 debtor. If the property is not sold by an auctioneer, the trustee, debtor in possession, or chapter 13 debtor shall file the statement and transmit a copy thereof to the United States trustee. (Underline added).

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[1] Charles Kevin Evans was an employee of mine.

Friedman did not file the required Rule 6004 (F) (1) "itemized statement" showing the property sold, the name of the purchaser, and the price received for the property that Rule 6004 requires that he file "on completion of the sale." As you will see, infra, Friedman has surreptitious reasons for not filing the required Rule 6004 (F) (1) "itemized statement."

On August 25, 1994, I deposed Lewis. The full transcript of this deposition is in the Court record, being entered by me during a September 19, 1994, hearing regarding Friedman's 5th interim compensation request. I have, however, attached the pertinent pages (**Exhibit 3**) to this letter. Lewis' testimony indicates that Lewis, Friedman, and Wilcoxon committed criminal acts in the sale and purchase of the "race car assets." Consider the following testimony:

a) Lewis testified that he only received a portion of the "race car assets" identified by Friedman in the various pleadings and motions he filed in my bankruptcy case, and that the race car engine, the race

car transmission, major components of the race car, and all tools (except for four or five combination wrenches), the truck, household items, furniture, jewelry, and other items were not provided to him by Friedman (Exhibit 2, page 61, lines 5-24, page 62, lines 20-24; page 63, lines 17-24; page 64, lines 1-12; page 55, lines 16 & 17).

b) Lewis testified that, except for the Gold Rush trailer, he did not know if the race car assets he receive were the same assets that were delivered to Atlantic Auctions by Evans because "there were no identifying marks on any of the items he received" (Exhibit 2, page 56, lines 3-14, page 61, lines 14-24; and, page 62, line 1).

c) Lewis testified that he purchased the race car for $6,000.00 to $7,000.00 and sold it for $18,000.00; that he did not have a bill of sale, was paid by check that he deposited in the Metro Corporate checking account; and, that he could not remember the name, address, or phone number of the purchaser (Exhibit 2, page 54, line 7; page 68, lines 7 & 8; page 65, lines 5 & 6; page 65, lines 5 & 6, page 54, lines 7 & 8; page 54, lines 7 & 8; page 54, lines 7 & 8; page 65, line 10; page 64, lines 18 & 19; page 65, lines 3 & 4; page 67, lines 19 & 20; and, page 67, lines 21 & 22).

d) Lewis subsequently retracted his testimony that he had received a check in payment for the race car and testified that he had received cash instead, but that he did not know who took the cash (Exhibit 2, page 74, lines 18-22, page 75, lines 19 & 20).

e) Lewis testified that Mark Friedman told him he was to pay the price of $28,000.00 for the assets (Exhibit 2, page 54, lines 6-16).

f) Lewis testified that he gave the graduated set of three Snap-On tool boxes to Kevin Evans in return for allegedly performed on a "dump truck" that he

(Lewis) did not own (Exhibit 2, page 69, lines 12-24; page 70, lines 1-7; page 70, line 23; page 71, lines 1-6).

g) Lewis testified, regarding the Snap-On Tools, that he only received a couple of hand tools, a battery tester, a battery charger, and four or five combinations wenches (Exhibit 2, Page 62, lines 2-22).

Lewis testified that he paid $28,000 for assets that had a total value of $26,000 (Exhibit 2, page 54, lines 1-24, and page 55, lines 1-13). It is inconceivable that Lewis would pay $2,000 over what he knew the Race Car Assets to be worth unless there were other behind the scene agreements to hide what really happened to the Race Car Assets and who was to receive the money.

Lewis testimony develops a pattern of suspicious activity that cannot be condoned. One can only conclude that fraud and deception was committed upon the bankruptcy court, my estate's creditors, and myself. Likewise, Friedman's failure and refusal to account for the sale of the race car assets, and especially those that were not turned over to Lewis, cannot be condoned. It is very suspicious that the Race Car Assets were placed in the care, custody, and control of Wilcoxon (the person who valued them at $200,000) and then many of those assets mysteriously disappeared and their value decreased to $28,000.

In my September 28, 1994, telephone conference with Joseph Bellinger, a Piper and Marbury attorney working with Friedman, I learned that Wilcoxon took both still and movie pictures of all the Race Car Assets prior to Friedman taking possession, and that he also made a detailed listing of

those assets. Bellinger confirmed that Friedman had these pictures and listings in his possession (**Exhibits 4 & 5**), yet they have not been made available to either the bankruptcy court or me.

All this further supports my claim that Friedman and others committed fraud against my estate, the bankruptcy court, and me. In additional to millions of dollars of cash being misappropriated and perhaps embezzled by Friedman, Lewis' testimony indicates that assets belonging to my estate were stolen. Hundreds of thousands of dollars of Race Car Assets are missing--a race car valued in excess of $100,000 has allegedly been sold to Lewis for $6-7,000 and then resold for $18,000 in unaccounted for cash to an unknown party. The race car engine, the race car transmission, major components of the race car, and all tools (except for four or five combination wrenches), the truck, household items, furniture, jewelry, and other items were not delivered to Lewis by Friedman. These and other Race Car Assets just disappeared with no accountability. Other Race Car Assets were sold below their market value. This whole issue regarding the Race Car Assets seeks of secret deals, fraud, and thievery.

Further, Friedman charged my estate over $65,000 in legal fees concerning the turnover and sale of the Race Car Assets which only gained my estate $28,000. This represents a net loss to my estate of $37,000 without even considering the thousands of dollars Wilcoxon's charged my estate.

Conclusion

The law presumes that all officers entrusted with the duty and responsibility to uphold the law will execute their duties and responsibilities lawfully. This is especially true when an officer has virtual unlimited discretionary power, as is the case here with Friedman. However, any presumption

in favor of the validity of Friedman's actions does not apply when the facts infer beyond all reasonable doubt that he has violated the law and my personal rights, and deprived of my property in an illegal and willful manner.

I look forward to hearing from you shortly.

Sincerely,

Fred Allnutt

EXHIBIT 3

EXTRACT OF AFFIDAVIT AND TRANSCRIPT
OF HEARING Sept. 19, 1994

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE DIVISION

In re: FRED W. ALLNUTT, SR.	*	Case No. 92-5-7401-JS
	*	
Debtor.	*	Chapter 11
	*	

* * * * * * * * * * * *

AFFIDAVIT OF FRED W. ALLNUTT, SR.
IN SUPPORT OF DEBTOR'S MOTION TO REOPEN CASE
AND FOR WRIT OF MANDAMUS

I, Fred W. Allnutt hereby affirm that I am a competent adult of at least 18 years of age and declare the following to be true:

1. That I am the debtor in the above captioned case.
2. That attached hereto is a copy of the hearing of September 19, 1994 (**EXHIBIT 1**).
3. That, at this September 19th hearing, I informed this court and the trustee, Mark J. Friedman, of various improprieties with the monthly operating reports Friedman filed in my bankruptcy case.
4. The following is the pertinent portion of the September 19, 1994, hearing starting on page 97, and ending on page 100:

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16 THE WITNESS: There is $600,000 missing by the
17 financial statements.
18 THE COURT: You can just sit down at the counsel
19 table, Mr. Allnutt. I'm not going to hear from you anymore.
20 I hope I get through to you today, Mr. Allnutt. I don't
21 believe you, and I don't choose to hear from you anymore
22 with respect to any of these matters that you're bringing to
23 me. Do you have anything final to say?
24 MR. ALLNUTT: I understand because you look at it
25 from one perspective, sir, and I can't help that.

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1 THE COURT: Yes, the legal perspective,
2 Mr. Allnutt. I'm looking at it from the legal perspective.
3. THE WITNESS: I understand that.
4. THE COURT: What is your obligation as a debtor
5. under the law, which you have obviously failed to
6. appreciate. Is there anything else you want to say?
7. MR. ALLNUTT: I want to bring up the fact that
8. there's $600,000 missing from my estate that's unaccounted
9. for, and I have the documentation to prove it, and I would

like for this Court to take this documentation at this time.

THE COURT: And where is that money?

MR. ALLNUTT: That money -- I don't know where it is. If I knew where it was, I wouldn't have to bring in the documentation.

What this Court has before it is an analysis of monthly operating reports, and if you look at column four, it's the total amount of receivables that are listed in the monthly operating reports at the end of each month, and it gives the period -- not each month but the time period of the report, and we can see that at the end of 10/31, there was $3,078,000. Skipping down to the bottom, right now the last report shows $1,454,000 as yet in the accounts receivable. That's the difference of -- if you look at the bottom of column five -- of $1,624,000, but if you go over

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to column seven -- I'm sorry -- column six, and I've added every check by his cash receipts register with his -- not my

numbers -- but Mr. Friedman's numbers, and I've taken every
check that was received which he has totaled, and that's the
money he has posted as being received. Now, if you look at
11/1 to 12/31, the value of the receivables at that time was
$5,028,000 That means on column five they dropped
$550,000, yet he only shows cash receipts of $431,000, and
this receivable is not accounted for of $119,000, and that
scenario continues right on down through when you see on
June the 30th. And these are the documentation's before this
Court. This is just a summary. This is not my doings. I
didn't create this, I just took it from his document. I
didn't create these numbers, I created this document. I
made this document but we can see in June, there's a
$182,000 missing. There's only $66,000 that came in and
begs the question, how did the receivables decrease by
$249,000? I see no write-offs within the financial
statements, and I have seen no motions before this Court to
write off any bad notes, so I present that to this Court as

21. a very big problem. It has nothing to do with me, it has a
22. whole lot to do with money, and it has a whole lot to do
23. with the estate, and there's definitely something wrong.
24. THE COURT: That's it. I've heard enough. I am
25. going to approve this settlement, I'm going to approve the

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1. fee in the full amount. Thank you. That will conclude the
2. hearing